

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

C O N F I D E N T I A L STATE 070006

E. O. 11652: GDS

TAGS: PFOR, RP

SUBJECT: U. S./ PHILIPPINE EXTRADITION TREATY

REFS: A. MANILA 3649

B. MANILA 3716; C. MANILA 4176

1. GENERAL THOUGHTS: WHILE U. S. PREFERS VIEW EXTRADITION TREATIES AND NEGOTIATIONS LEADING THERETO AS TECHNICAL RATHER THAN POLITICAL, THERE CAN BE CONSIDERABLE POLITICAL FALLOUT IN THIS EFFORT. THIS MAY BE THE FIRST OF A SERIES OF AGREEMENTS TO BE NEGOTIATED WITH GOP IN NEAR FUTURE. WHILE OTHERS MAY CONCERN VITAL U. S. ECONOMIC AND MILITARY INTERESTS, THIS NEGOTIATION MAY AFFECT TONE OF U. S./ PHIL RELATIONS IN MARTIAL LAW PERIOD. ASIDE FROM GENERAL USEFULNESS OF ENTERING INTO AN EXTRADITION TREATY IT WOULD BE EXTREMELY BENEFICIAL TO GOP TO CONCLUDE IN AN EFFICIENT AND BUSINESSLIKE MANNER A THOROUGHLY NON- CONTROVERSIAL TREATY WITH THE USG WHICH COULD BE PRESENTED TO THE SENATE FOR RAPID AND HOPEFULLY HARMONIOUS RATIFICATION- IT WOULD PROVIDE A SENSE OF MOMENTUM, AND WOULD INDICATE THAT
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WE BELIEVE THAT SIGNIFICANT ISSUES CAN BE SETTLED IN A BUSINESSLIKE FASHION WITH MARCOS UNDER MARTIAL LAW. IN CON-

TRAST OPPONENTS OF MARCOS, OR THOSE WITH STEREOTYPED IMAGE OF MARTIAL LAW REGIMES MAY BE EXPECTED TO ATTACK ANY EXTRADITION TREATY NEGOTIATED OR PRESENTED FOR RATIFICATION WHICH DOES NOT SHOW THE MOST SCRUPULOUS REGARD FOR CIVIL

LIBERTIES. RETROACTIVITY PROVISIONS, WHATEVER GOP MOTIVES, WOULD BE COLORED AS DEVICE ENGINEERED TO SUPPRESS MARCOS CRITICS AND OLD POLITICAL FOES. ACRIMONIOUS DEBATE OF SUCH MATTERS COULD POISON CONGRESSIONAL AND PRESS ATTITUDES AGAINST MARCOS, WHICH TO THIS TIME REMAIN BASICALLY OBJECTIVE DUE TO PRUDENCE OF MARCOS' MARTIAL LAW "PHILIPPINE STYLE" AND GENERAL BENEVOLENT ATTITUDES OF U. S. PUBLIC, PRESS, AND CONGRESS TOWARDS PHILIPPINES. GIVEN FACT THAT MUCH OF WHAT MARCOS DESIRES IN FUTURE FROM USG COULD BE IMPERILLED IF PRESS, PUBLIC AND CONGRESS WERE HOSTILE, WE WOULD PREFER SUSPENSION OR DELAY OF NEGOTIATIONS RATHER THAN TO ENTER INTO PROCESS WHICH COULD, IN OUR VIEW, BECOME RATHER PRICKLY. THEREFORE BEFORE WE COMMENCE FIRST SESSION WE MUST ADEQUATELY SAFEGUARD OURSELVES BY HAVING GOP ASSURANCE THAT QUESTION OF RETROACTIVITY WILL BE HANDLED IN ACCORDANCE WITH SCENARIO SET OUT IN PARAS 6 AND 7 BELOW.

2. TRIAL OF EXTRADITED PERSONS BEFORE EXTRAORDINARY TRIBUNALS: RE PARA 4 REFTEL A, 6 WHITEMAN DIGEST 889 CONTAINS REFERENCES TO EXTRADITION LAWS OF BRAZIL AND SWEDEN THAT BAR EITHER EXTRADITION OF PERSON FOR TRIAL BY EXTRAORDINARY COURT OR COURT HAVING SPECIAL JURISDICTION OR SUCH TRIAL OF PERSON ALREADY EXTRADITED. USG WOULD NOT GRANT EXTRADITION OF PERSON FOR TRIAL BEFORE SPECIAL OR MILITARY COURT (UNLESS, AND ONLY IF, PERSON SOUGHT IS MEMBER OF MILITARY OF REQUESTING STATE AND IS TO BE TRIED BY MILITARY COURT FOR OTHER THAN PURELY MILITARY OFFENSE). 1961 U. S./ BRAZIL TREATY PROVIDES EXTRADITION SHALL NOT BE GRANTED WHEN PERSON SOUGHT WOULD HAVE TO APPEAR IN REQUESTING STATE BEFORE EXTRAORDINARY TRIBUNAL OR COURT. 1961 U. S./ SWEDISH TREATY HAS BAR TO SURRENDER WHEN PERSON SOUGHT HAS BEEN OR WILL BE TRIED BY EXTRAORDINARY TRIBUNAL OR COURT IN REQUESTING STATE. U. S./ FRG DRAFT EXTRADITION TREATY PROVIDES THAT EXTRADITED PERSON SHALL NOT BE TRIED BY EXTRAORDINARY

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COURT IN TERRITORY OF REQUESTING STATE AND EXTRADITION SHALL NOT BE GRANTED FOR ENFORCEMENT OF PENALTY IMPOSED OR DETENTION ORDERED BY EXTRAORDINARY COURT. WHILE DEPARTMENT VIEWS SUCH TREATY PROVISIONS AS DECLARATIVE OF GENERAL INTERNATIONAL EXTRADITION PRACTICE, APPLICABLE WHETHER EXPRESSLY INCLUDED IN TREATY OR NOT, AND CONSIDERS THAT MILITARY COURTS, AND EVEN ORDINARY CRIMINAL COURTS SUBJECT TO SPECIAL PROCEDURES AS RESULT OF MARTIAL LAW, ARE ENCOMPASSED BY TERM EXTRAORDINARY COURT OR COURT WITH

SPECIAL JURISDICTION, DEPARTMENT CONSIDERS IT ESSENTIAL THAT IN EXTRADITION TREATY NEGOTIATED DURING EFFECT OF MARTIAL LAW IN PHILIPPINES, EXPLICIT AND ADEQUATE PROVISIONS IN THIS REGARD MUST BE

MADE IN TREATY TO MEET THE FORESEEABLE DOUBTS AND QUESTIONS OF SENATE DURING U. S. RATIFICATION PROCESS. PREFER TO LEAVE WORDING FOR PRESENTATION DURING NEGOTIATIONS, WITH LANGUAGE APPLYING EQUALLY TO ALL PERSONS SOUGHT BY GOP IN EXTRADITION, WHETHER PHILIPPINE OR OTHER NATIONALS.

3. EXTRADITION OF U. S. SERVICEMEN WHERE U. S. GOVERNMENT HAS ASSERTED JURISDICTION: RE PARA 5 REFTEL A, DEPARTMENT WILL DEVELOP ADEQUATE WORDING WITH DOD AND JUSTICE FOR PRESENTATION DURING NEGOTIATION.

4. RETROACTIVITY PROVISION: RE PARA 6 REFTEL A, U. S. HAS NOT REPEAT NOT NEGOTIATED EXTRADITION TREATY SINCE 1970 WITH NEW STATE BASED ON NEW MODEL. AS INDICATED 6 WHITE-MAN 753-4, IN EVENT OF SILENCE ON RETROACTIVITY, TREATIES LIKE 1961 U. S./ ISRAEL TREATY HAVE RETROACTIVE EFFECT WITH RESPECT TO LISTED OFFENSES COMMITTED BEFORE TREATY CAME INTO FORCE THAT MEET DOUBLE CRIMINALITY REQUIREMENT, I. E. WERE FELONIES UNDER LAWS OF BOTH COUNTRIES AT TIME OF THEIR COMMISSION. IT HIGHLY UNLIKELY THAT USG COULD IN FUTURE AGREE TO RETROACTIVITY WITH ANY NEW STATE NOT HAVING EXTRADITION LAW, AND WHERE USG HAS NO CERTAINTY AS TO CRITERIA AND RELIABILITY WITH WHICH EXTRADITION REQUESTS WOULD BE SCREENED BY THAT GOVERNMENT BEFORE BEING FORMALLY MADE TO USG.

5. EXTRADITION OF ALLEGED PLOTTERS: RE PARA 8 REFTEL A, DEPARTMENT STRONGLY SUSPECTS THAT GOP INTERESTED NOT ONLY
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IN POSSIBILITY OF EXTRADITING U. S. NATIONALS ALLEGEDLY CONNECTED WITH ASSASSINATION PLOTS, BUT MAY INTEND TO USE FACT OF TREATY NEGOTIATIONS, POSSIBILITY OF RETROACTIVITY TO COVER ALLEGED PLOTS, AND ABSENCE OF AVAILABILITY OF POLITICAL OFFENSES DEFENSE, TOGETHER WITH PHIL EFFORTS TO CONNECT MARCOS' OPPONENTS IN U. S. TO PLOT, AS MEANS OF INHIBITING OPPOSITION ACTIVITY OF OPPONENTS IN U. S. IN THIS CONNECTION, EMBASSY SHOULD BE AWARE THAT U. S. EXAMINATION OF EXTRADITION DOCUMENTS (PRESENTED BY REQUESTING STATE IN SUPPORT OF EXTRADITION REQUESTS) FOR SUFFICIENCY DOES NOT INCLUDE DETERMINATION WHETHER DOCUMENTS ARE GENUINE OR BASED ON SPURIOUS CHARGES. DOCUMENTS SUBMITTED, IF IN DULY CERTIFIED AND AUTHENTICATED FORM, ARE TAKEN AT FACE VALUE, AND DEFENSES AVAILABLE TO PERSON SOUGHT AGAINST EXTRADITION DO NOT INCLUDE PROFESSIONS OF INNOCENCE, ALLEGATIONS OF FRAME- UP OR THE LIKE WHICH

WOULD BE CONSIDERED PROPER FOR PERSON SOUGHT TO RAISE DURING TRIAL IN THE REQUESTING STATE. FOR THIS REASON NEGOTIATION OF EXTRADITION TREATY NORMALLY PRESUMES SUBSTANTIAL FAITH BY EACH STATE IN INTEGRITY OF JUDICIAL PROCESSES OF THE OTHER STATE. THIS FACT, WHEN TAKEN

TOGETHER WITH FACT THAT TREATY OBLIGATION TO EXTRADITE IS ABSOLUTE EXCEPT WHEN CIRCUMSTANCES OF INDIVIDUAL REQUEST PLACES IT WITHIN EXCEPTION EXPRESSLY PROVIDED BY TREATY, IS BASIS FOR OUR GRAVE MISGIVINGS AT GOP INTEREST IN RETROACTIVITY TO ENCOMPASS ASSASSINATION PLOT.

6. NEGOTIATION SCENARIO: RE PARA 11 AND 12 OF REFTTEL A, AND RE REFTTEL B, DEPARTMENT PREFERS TO HOLD INITIAL SESSION AT MANILA TO COMMENCE AFTERNOON OF MAY 2, LIMITING THIS SESSION TO DISCUSSION OF MATTERS ON WHICH AGREEMENT LIKELY, I. E. EVERYTHING BUT RETROACTIVITY. DUE TO PRIOR NEGOTIATING COMMITMENTS AND TRANSFER OF PERSONNEL U. S. NEGOTIATING TEAM WILL NOT BE ABLE TO TRAVEL TO MANILA AFTER PROPOSED MAY 2-11 PERIOD UNTIL 1974 AT EARLIEST. SAME WOULD APPLY IF NEGOTIATIONS WERE HELD IN U. S. GOP SHOULD BE ADVISED U. S. TEAM WILL NOT HAVE AUTHORITY TO ACCEPT RETROACTIVITY PROVISION OR ENTER INTO NEGOTIATION REGARDING SAME. OUR CONCERNS REGARDING THIS PROVISION HAVE BEEN OUTLINED IN PARAS 1, 4 AND 5 ABOVE AND MAY BE DRAWN
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UPON AS APPROPRIATE BY EMBASSY TO EXPLAIN OUR INABILITY ACCEPT RETROACTIVITY. AT CLOSE OF FIRST SESSIONS DEPENDING ON PROGRESS AT THAT TIME, AND IF ADVISABLE WE COULD ONCE AGAIN OUTLINE THE REASONS WE ARE UNABLE TO ACCEPT RETROACTIVITY. NEVERTHELESS WE BELIEVE THIS COULD BETTER BE ACCOMPLISHED INFORMALLY AT APPROPRIATE LEVEL BY EMBASSY PRIOR TO DECISION TO COMMENCE NEGOTIATIONS. WE WOULD AGREE TO SCHEDULE SECOND SESSION FOR DISCUSSION OF CONSEQUENT PROBLEMS AND OTHERS THAT MIGHT REMAIN OR MIGHT HAVE BEEN TURNED UP IN COURSE OF GOVERNMENT'S EXAMINATION OF DRAFT NEGOTIATED DURING FIRST SESSION.

7. COMMENCEMENT OF NEGOTIATIONS: IF ABOVE SCENARIO ACCEPTABLE TO EMBASSY, EMBASSY AUTHORIZED TO PROPOSE THAT FIRST ROUND OF NEGOTIATIONS COMMENCE AFTERNOON OF MAY 2 TO EXTEND INTO FOLLOWING WEEK AND UP TO BUT NOT BEYOND MAY 11. ROGERS

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